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Request for a subvention to the Special Court for Sierra Leone

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the request for a subvention to the Special Court for Sierra Leone (A/65/570). During its consideration of the report, the Advisory Committee met with the Registrar and other representatives of the Special Court for Sierra Leone, as well as with representatives of the Secretary-General, who provided additional information and clarification.

2. The report of the Secretary-General was prepared in response to an exchange of letters between the Secretary-General and the President of the Security Council. In his letter dated 6 October 2010 (S/2010/560), the Secretary-General drew the attention of the Security Council to the financial difficulties faced by the Special Court for Sierra Leone and proposed that the matter be brought to the attention of the General Assembly with a view to seeking the appropriation of funds for the Court, while preserving its independence. In his reply dated 29 October 2010 (S/2010/561), the President of the Security Council noted the course of action proposed by the Secretary-General and expressed no objection, on the understanding that it was not expected that there would be additional subventions for the Special Court and that the United Nations Secretariat, the Management Committee, the Registrar and other senior officials of the Special Court would intensify their efforts to fund its activities through voluntary contributions.

3. In section II of his report, the Secretary-General gives an overview of the historical background of the financing of the Special Court. The Secretary-General recalls, inter alia, that when he prepared his original report on the establishment of an independent special court for Sierra Leone, he expressed the view that the only realistic solution was for the Special Court to be financed from assessed contributions, as that would produce a viable and sustainable financial mechanism

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affording secure and continuous funding (see S/2000/915, para. 71). However, in his letter to the Secretary-General dated 22 December 2000 (S/2000/1234), the President of the Security Council reiterated the Council's support for its resolution 1315 (2000), pursuant to which the Special Court would be funded through voluntary contributions, on the understanding that the Secretary-General would not be expected to create any institution for which he did not have adequate funds in hand for at least 12 months and pledges to cover expenses for a second year of the Court's operation.

4. Article 6 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone stipulates that, should voluntary contributions be insufficient for the Court to implement its mandate, the Secretary-General and the Security Council shall explore alternate means of financing the Special Court. Accordingly, as he indicates in paragraphs 9 and 10 of his report, in 2004 and 2005 the Secretary-General approached the General Assembly with three requests for subventions for the Court. On the first occasion, the Assembly, in its resolution 58/284, authorized the Secretary-General to enter into commitments in an amount not to exceed $16.7 million for the period from 1 July to 31 December 2004, on the understanding that any regular budget funds appropriated for the Court would be refunded to the United Nations at the time of the Court's liquidation, should sufficient voluntary contributions be received. The commitment authority was not utilized and was ultimately surrendered, in accordance with financial regulation 5.3. Subsequently, in its resolution 59/276, the Assembly authorized the Secretary-General to enter into commitments in an amount not to exceed $20 million to supplement the financial resources of the Court for the period from 1 January to 30 June 2005. Then, in its resolution 59/294, the Assembly authorized the appropriation of $20 million of the previously approved commitment authority, as well as a further commitment authority in the amount of $13 million. Pursuant to Assembly resolution 60/245 A, $11.2 million of the $13 million commitment authority was appropriated. Of that amount, an unspent balance of $3,286,506 was surrendered on 31 December 2006.

II. Progress made by the Special Court for Sierra Leone

5. In section III of his report, the Secretary-General describes the progress made by the Special Court towards the achievement of its mandate. He states, inter alia, that to date eight persons have been successfully prosecuted and convicted for the commission of war crimes, crimes against humanity and serious violations of humanitarian law. The convicted persons are now serving custodial sentences ranging from 15 to 52 years. The Secretary-General further states that the jurisprudence of the Special Court has contributed to the development of international law and to the work of other international tribunals. For instance, for the first time in history, the recruitment and use of child soldiers and sexual slavery were classified as an outrage against human dignity, the specific war crime of "attack on peacekeepers" was established, and forced marriage during wartime was identified as a separate crime against humanity.

6. In paragraph 11 of his report, the Secretary-General indicates that the Court has entered its completion phase and is conducting its final trial, which relates to the former President of Liberia, Charles Taylor. The trial judgement is expected in June 2011, and it is anticipated that any appeals proceedings will be concluded by

February 2012. In paragraph 14, the Secretary-General states that the Court has been conducting phased downsizing in order to align its human resources and financial requirements with its completion strategy, and that it has also made significant progress in dealing with all matters pertaining to its liquidation.

7. The Advisory Committee notes from paragraph 14 of the report that, in July 2010, the United Nations and the Government of Sierra Leone signed an agreement on the establishment of a residual court for Sierra Leone. Upon enquiry, the Committee was informed that, following the closure of the Special Court, the residual court would maintain the archives, provide witness protection if required, respond to requests from national prosecution authorities, supervise the enforcement of sentences and review convictions if necessary. The residual court would consist of a five- to eight-member secretariat and would share administrative support with another institution.

8. The Advisory Committee was informed that the Special Court for Sierra Leone was expected to be the first of the international tribunals to complete its work and that, as such, it would serve as a reference for best practices and lessons learned for the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and other hybrid international courts. **The Committee encourages the Special Court for Sierra Leone to keep a comprehensive documentary record of all best practices and lessons learned, including those relating to the downsizing and liquidation processes, so that other international tribunals can benefit from its experiences.**

III. Current financial position

9. The Advisory Committee notes that, since the Court's inception, it has received voluntary contributions totalling $200,034,974 for its core operations. However, in paragraphs 15 and 16 of his report, the Secretary-General indicates that, despite the efforts of the Special Court, the Secretary-General and Member States to mobilize further resources, including, since 2009, the holding of 174 fund-raising meetings and the sending of 225 fund-raising appeal letters, the level of voluntary contributions available to the Court remains low. The Committee was provided, upon enquiry, with a copy of the report of the Auditor-General of South Africa on the financial statements of the Special Court for Sierra Leone for the year ended 31 December 2009 in which he stated, inter alia, that if the Court continued to incur expenditure at the present rate and failed to secure additional funding in the near future, the available funding would be exhausted in 2010.

10. The Advisory Committee was informed, upon enquiry, that the Court had not received positive reactions from Member States regarding the possibility of further contributions. In fact, some States had indicated that their 2010 pledges represented their final contributions towards the completion of the Court's mandate. Governments had told the Court that the effects of the global economic crisis had prevented them from being able to donate additional funds.

11. Annex I to the report of the Secretary-General contains a table illustrating the availability of funds for the Special Court as at 30 September 2010 and the projected requirements from 1 November to 31 December 2010. Total contributions received by the Court during the period from January to September 2010 amount to $15,199,314. As at 30 September, the balance of income over expenditure for the

year amounted to $652,805. Projected expenditure for October, November and December 2010 amounts to $5,600,000. Factoring in a contribution from Sweden in the amount of $444,840, it is projected that the Court will end the year with a deficit of $4,502,355. In paragraph 18 of his report, the Secretary-General indicates that, in order to continue its operations until 31 October 2010, the Special Court deferred vendor payments and curtailed all non-essential travel and activities.

12. In paragraph 19 of his report, the Secretary-General states that, while the mobilization of resources for the Court is ongoing, immediate alternative mechanisms for financing are necessary to bridge the anticipated shortfall, which, given expected pledges and the proposed overall level of resources required from November 2010 to February 2012, amounts to approximately $17,916,560. Accordingly, to ensure that the Special Court is able to complete its work, he is proposing that a subvention in that amount be made available to the Court, while preserving its independent nature and structure. Of that amount, an estimated $4,502,355 would be made available for the remainder of 2010, $11,057,455 for 2011 and $2,356,750 for January and February 2012, when the Court is expected to complete its work.

13. Upon enquiry, the Advisory Committee was informed that, subsequent to the issuance of the report of the Secretary-General, the Special Court had received additional pledges from Montenegro ($1,000), the United Kingdom of Great Britain and Northern Ireland ($631,960) and the United States of America ($4,455,445). Accordingly, the Court is now in a position to continue operating without a subvention until 31 December 2010, and it is anticipated that it will end the year with a projected excess of income over expenditure in the amount of $586,050. The Committee was provided with updated requirements for the financing of the Court for the period from 1 November 2010 to 29 February 2012 (see table below). The Committee notes from the table that the revised request for a subvention amounts to $12,239,344. Of that amount, $9,882,594 would be required for 2011, with the remainder, $2,356,750, required for January and February 2012.

Financing of the Special Court for Sierra Leone, 1 November 2010-29 February 2012

(United States dollars)

A. Requirements		
1 November-31 December 2010		4 502 355
Less contributions received in November 2010:		
Montenegro	(1 000)	
United Kingdom	(631 960)	
United States	(4 455 445)	
		(5 088 405)
Excess of income over expenditure in 2010		586 050

	1 January-31 December 2011		12 290 500
	Less pledges:		
	Germany (for 2010)	(1 233 045)	
	Netherlands	(588 811)	
			(1 821 856)
	Amount required in 2011		9 882 594
	Amount required for 1 January-29 February 2012		2 356 750
	Total estimated requirements, 1 January 2011-29 February 2012		**12 239 344**
B.	**Subvention**		
	Amount sought for the biennium 2010-2011		9 882 594
	Amount to be sought in the context of the proposed programme budget for 2012-2013		2 356 750
	Total request for subvention for 1 January 2011-29 February 2012		**12 239 344**

14. The Advisory Committee notes from paragraph 22 of the report that the requested subvention, once approved by the General Assembly, would be disbursed by the Organization to the Special Court in the same way as for previous subventions; that is, the funds would be transferred to the Court by the Controller on an incremental basis and adjusted according to the status of voluntary contributions. The Registrar would be required to provide the Controller with monthly statements of income and expenditure, and the existing arrangements for internal and external audit services would remain in place. **The Committee stresses the need for ongoing oversight of the management of the Special Court's assets.**

IV. Conclusion and recommendations

15. **In view of the importance of the activities undertaken by the Special Court for Sierra Leone, and bearing in mind the progress it has made towards the achievement of its mandate, the Advisory Committee recommends that the General Assembly approve, as an exceptional measure, funding of up to $12,239,344, covering the periods 1 January to 31 December 2011 and 1 January to 29 February 2012, to supplement the voluntary financial resources of the Court so that it can complete its work. The Committee recommends that the General Assembly:**

(a) **Approve a subvention for the Special Court for Sierra Leone in the amount of $9,882,594 for the period from 1 January to 31 December 2011, in accordance with the provisions of paragraph 11 of annex I to its resolution 41/213, under the provision for special political missions under section 3, Political affairs, of the programme budget for the biennium 2010-2011;**

(b) **Note that an additional subvention for the Special Court in the amount of $2,356,750 for the period from 1 January to 29 February 2012 would be included as a first charge against the provision for special political missions under section 3, Political affairs, of the proposed programme budget for the**

biennium 2012-2013 and would be submitted to the General Assembly at its sixty-sixth session;

(c) Request the Secretary-General to report to the General Assembly at its sixty-sixth session on the implementation of the subvention during the biennium 2010-2011 and on the status of voluntary contributions for the Special Court.

16. **The Advisory Committee stresses that the recommendation in the preceding paragraph is made on the understanding that: (a) any regular budget funds appropriated for the Special Court will be refunded to the United Nations at the time of the Court's liquidation, should sufficient voluntary contributions be received; (b) it is not expected that there will be additional subventions for the Special Court for Sierra Leone; and (c) the United Nations Secretariat, the Management Committee, the Registrar and other senior officials of the Special Court will intensify their efforts to fund the activities of the Court through voluntary contributions.**